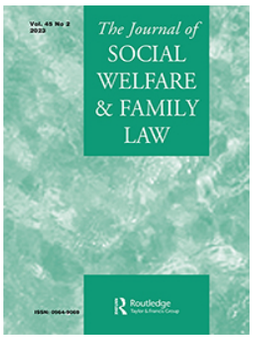

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DEBATES IN SOCIAL WELFARE

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Expanding the boundaries of social welfare law

Jed Meers[a], Helen Carr[b], Edward Kirton-Darling[c] and Maria Fernanda Salcedo Repolês[d]

[a]York Law School, University of York, York, UK; [b]Southampton Law School, University of Southampton, Southampton, UK; [c]University of Bristol Law School, University of Bristol, Bristol, UK; [d]Faculty of Law, Federal University of Minas Gerais, Belo Horizonte, Brazil

ABSTRACT

'Social welfare law' is suffering from a longstanding identity crisis. The field's development in the UK is tied closely to that of this journal – its foundation in the 1970s as the 'Journal of Social Welfare Law' reflected a burgeoning area of research and practice. However, many of the concerns raised at the time about the meaning, scope and future direction of 'Social welfare law' as an area of research, teaching and practice remain unresolved. As Martin asked, is there 'really something here which deserves recognition as a distinct field of law?' In revisiting social welfare law's problem of definition, this article does two things. First, drawing on prior work on 'Social welfare law', we provide a typology of approaches to defining the field of inquiry. We argue that there are five approaches reflected in writing on social welfare law: 'statutes specify', 'law for the poor', the 'dustbin', the 'case study' and 'common denominator risk'. Second, we draw two reflections about how future social welfare law research can expand its boundaries. We argue for: (i) a 'global' social welfare law scholarship, and (ii) analysis that accounts for non-state actors.

KEYWORDS

Social welfare law; welfare law; welfare state; welfare typologies

Introduction

'Social welfare law' is suffering from a longstanding identity crisis. Its meaning and scope has been variously described as an enduring 'definitional difficulty' (Partington 1987, p. 420), a source of 'considerable disagreement' (Adler 2022, p. 400), and an area 'largely unrecognised as a distinctive and unified legal speciality' (Martin 1978, p. 1255). Some, such as Duncanson, have gone further. Writing in 1976, he argued that welfare law does not deserve to be recognised as a distinct field of inquiry, as it is:

> . . . [a] new and therefore fairly marginal subject, it is parasitic upon existing knowledge because its intellectual identity is, as I have argued, a mirage, and it deals with what appear to be minor issues, endless difficulty over £2 per week, and so on . . . . (Duncanson 1976, p. 33).

Although this scepticism over whether social welfare law can 'constitute a legitimate "field"' in its own right was at its peak in its formative years in the 1960s and 1970s, social welfare law's so-called 'problem of definition' remains unresolved (Friedman 1968,

CONTACT Jed Meers jed.meers@york.ac.uk

p. 217). Indeed, it is striking that Drabble still finds it necessary to remind readers in 2022 that welfare law is 'real and important' and even though the 'law involved may not be familiar' to most readers, nevertheless – he protests – 'it is law' (Drabble 2022, p. 278). The question Friedman posed in 1969 was this: 'are social welfare laws a class different from other laws?' (Friedman 1968, p. 218). He suggests that 'many people intuitively sense a difference', but even those at the forefront of the field 'find it hard to say where the difference lies' (Friedman 1968). His sentiment was echoed – albeit more forcefully – by Martin, who argued that a legitimate question in the face of this 'failure of terminology' is whether 'there really is something here which deserves recognition as a distinct field of law' at all (Martin 1978).

This article takes up the baton on this 'problem of definition' for social welfare law. Our argument is in two sections. First, drawing on prior work on 'social welfare law', we provide a typology of approaches to defining the field of inquiry. We argue that there are five approaches reflected in prior writing on social welfare law: 'statutes specify', 'law for the poor', the 'dustbin', the 'case study' and 'common denominator risk'. Second, we draw on our experiences of editing a forthcoming research handbook on social welfare law to make two reflections on expanding the boundaries of social welfare law scholarship (Carr *et al.* Forthcoming). We argue that scholars should move to a more towards a 'global' conception of social welfare law scholarship – incorporating the broader scope of social welfare law that often characterises scholarship in the Global South (although we are alert to the critiques of the breadth of this framing) and avoiding the 'indigenisation' of western scholarship to a global context. Finally, we highlight the (arguably increasing) importance of private and charitable providers in the delivery of social welfare provision and argue against a 'state only' conception of the scope of social welfare law.

This journal is itself intimately connected to the development of social welfare law scholarship. As Maclean argues in a recent festschrift celebrating Baroness Hale, this journal's founding in 1978 under its original title of the 'Journal of Social Welfare Law' was a recognition of both a burgeoning area of legal practice in welfare issues and of an increasing academic interest in the legal and policy issues that it raises (Maclean 2022). Indeed, this issue sees the launch of a new 'Debates in Social Welfare' section – reaffirming the journal's commitment to the field (Hitchings 2023). In returning to social welfare law's 'problem of definition' and debates over the 'boundaries of welfare law' within its formative years (Mesher 1979), we seek to demonstrate how much the field has evolved from early academic interest in the legal challenges posed by the massive post Second World War expansion of welfare states, while arguing that social welfare law scholarship needs still to evolve further to expand its boundaries.

Approaches to defining social welfare: from dustbins to common denominator risk

Notwithstanding the rapid expansion of welfare states across the world in the wake of the Second World War, it took time for legal scholarship to catch-up. Writing in the 1970s, laments from two of the first leading 'welfare law' scholars – Martin in the US and Partington in the UK – illustrate the difficulties facing this rapidly developing field of study (Martin 1974, 1978, Partington 1977b, 1987). Martin criticised the lack of recognition given to a topic of such legal and social importance. As he put it, legal scholarship

stubbornly refused to recognise 'welfare law' as a 'species, genus, family, order, class, or phylum' and a glance down contemporary legal periodicals would lead the reader to conclude that 'it is neither a subject which law teachers teach nor one about which scholarly articles are written' (Martin 1974, p. 792). Writing in the UK at the same time, Partington warned those who are 'coming new to welfare law' that there is 'no clear, single view of what constitutes welfare law, let alone whether and how it should be taught and practiced' (Partington 1977b, p. 2).

Even if not yet acknowledged in the pages of legal periodicals and academic journals, on the ground, welfare law was well-established as key site of practice and political action. Scholarship in both the UK and the US identified a 'new breed of lawyer' emerging across the 1960s and 1970s with distinct 'philosophies of legal assistance' (Shepard, 2007, 17; Katz, 1982, 6). Characterised as 'poverty lawyers', 'poor people's lawyers' or 'welfare lawyers', they were described, as Shepard notes, as being 'imbued with a bitter notion that goes back at least to Elizabethan days that there are two kinds of law, one for the rich and another for the poor' (Shepard, 2007, 17). From the 'deep south' in the US to the cities of the UK, this was an area of practice tied to the Law Centre initiative (Bellow 1973, Stephens 1981) – a movement reflecting the broader politics of the welfare rights agenda (Rose 1973).

The link between practice and academic scholarship was not without controversy. 'Intellectual scepticism' at the time suggested, in Partington's words, that 'those engaged in welfare law should, at all events, pause to ask what it was they were trying to achieve' (Partington 1977b, p. 5). This febrile academic atmosphere around this nascent field led to attempts, particularly in the UK and US, to define the field of inquiry of social welfare law scholarship. These were characterised by Duncanson as the field's 'attempt to achieve coherence': an effort he argued was ultimately in vain (Duncanson 1976, p. 32). These different approaches to sketching out the boundaries of social welfare law are, however, a useful demonstration of how approaches to social welfare law as a subject varies across current scholarship. Here, we outline five approaches: 'statutes specify', 'law for the poor', the 'dustbin', the 'case study' and 'common denominator risk'.

The first is what we characterise as the 'statutes specify' approach. Here, 'social welfare law' is an academic subject that examines statutory entitlements to state support – particularly rights to forms of income assistance and statutory duties to care or make provision for vulnerable groups, such as children. Where the scope of these statutory duties end, so does the boundaries of social welfare law as a field of inquiry. Understandably for a nascent subject in need of mapping out, much early scholarship takes precisely this approach; setting out key pieces of legislation and explaining the duties that lie within (for instance, see Pearl and Gray (1981)). Here, 'social welfare law' is effectively synonymous with the 'narrower phrases' of 'social security law' or 'social welfare legislation' (Mesher 1979, p. 34).

Although understanding these statutory duties is essential to social welfare law scholarship and practice, this 'statutes specify' approach cannot hold as a definition of what the broader field of 'social welfare law' is. As argued by Duncanson, to define the field of inquiry solely by the scope of duties outlined by the state is to 'subserve academic criteria to state rhetoric and administrative agency' (Duncanson 1976, p. 32). As the pages of the Journal of Social Security Law attest, even the narrower term 'social security law' does not simply focus on whatever legislation the Government of the day chooses to

pass. If social welfare law is going to amount to 'more than a straightforward descriptions of the rules governing various benefits' it needs go beyond setting out or critiquing legislation (Mesher 1979, p. 39) – not least given the greater role ascribed to the private sector in modern welfare states (see Veitch 2013); an issue to which we return below.

The second influential approach is what we characterise as 'law for the poor'. This is an approach that treats social welfare law through the lens of poverty alleviation – a move where, as Duncanson describes it, 'welfare law becomes poverty law' (Duncanson 1976, p. 33). This is the approach preferred by Partington, at least to draw boundaries around the subject so it can be taught to undergraduate law students and explained to those unfamiliar with the subject (Partington, 1977b). He suggests that welfare law should primarily address two questions. How do the poor get help? This includes questions about rights enforcement and methods of address. Examples may include the 'adequacy of legal aid' the availability of 'neighbourhood law centres' and the 'intractable problems of discovering unmet legal need' (Partington, 1974, 137). And what rights do the poor have? This covers any rights 'which purport to protect the poor' and would 'partly involve simply studying existing subjects from this special view point' (Partington, 1974, 137).

This approach is railed against by Duncanson, who describes it as the 'most insidious claim that Welfare Law may have to unity' (Duncanson 1976, p. 33). He raises concerns that it unduly narrows the field of inquiry and may, over time, marginalise academic study of the subject by neglecting how social welfare law bites across far larger proportions of the population. As he puts it, the danger is that:

> By a subtle metamorphosis aided by the dominant social ideology, the people who give Poverty Law its unity become themselves marginal, parasitic and without significance . . . . [welfare law] becomes the trendy preserve of the 'socially aware' . . . An evaluation of the law properly involves a discussion of how well it treats, inter alia, children, parents, spouses and those who are or have been or cannot be employed. If we shift our enquiry and examine merely the law of the poor, we alter the nature of our conclusions (Duncanson 1976, p. 33).

Duncanson's concerns are not just about marginalisation, but also stigma. If 'everything to do with the poor is stigmatised' adopting 'an epistemology in which they have their "own" law' will only re-produce the same stigma in the study and scholarship of social welfare law itself (Duncanson 1976, p. 33).

Duncanson's concerns aside, we would suggest that the clear limitation of the 'law for the poor' approach is that much of what should properly be considered 'social welfare law' is not limited to those on low or no incomes. The concept of 'universalism' – coined originally to describe social welfare policies directed at the entire population, rather than a targeted subset – is an important hallmark of the Nordic welfare model and is an ethos (arguably increasingly) reflected in certain European countries (Anttonen *et al.* 2013, pp. 187–188). Here, although much of the social welfare law canon will be directed at those on low incomes, by no means all of it is. Pensions, disability benefits, social care services, the National Health Service, state funded education – and so on – cannot be fully understood by a focus on their role for those on low-incomes only. A solely 'law for the poor' boundary for social welfare law is in danger of neglecting the far broader reach of the welfare state.

The third and fourth approaches are closely related. They are what we characterise as the 'dustbin' and 'case study' approaches, both of which define social welfare law with

reference to subsets of other subjects. In the 'dustbin' approach, social welfare law scholarship is an umbrella term for a number of otherwise distinct subject sections. The question is simply which constellation of sub-topics fall within social welfare law's scope. Disagreements over early efforts to create 'social welfare law' textbooks illustrate this well. Pollard's – notwithstanding that it ran to over 1,600 pages (Pollard 1977) – was criticised for omitting fields of law as diverse as customer protection, immigration law, the law relating to domestic violence, and employment law (Partington 1977a).

In a recent edited collection setting out a research agenda for 'social welfare law, policy and practice', Adler wrested with this 'dustbin' approach when setting out his thinking on how to design the contributions. He drew on the Low Commission on the Future of Advice and Legal Support - one of the 'largest independent inquiries into the future of social welfare law' undertaken in the UK, to identify the subjects of 'asylum, community care, education, employment, debt, housing, immigration and welfare benefits' as falling within social welfare law's purview (Adler 2010, p. 2). Dissatisfied with what he saw as an unduly narrow approach, he expanded the list into 'all the major areas of non-economic law' to bring 'health law, social care law, social work and child welfare law' into the social welfare law mix (Adler 2010, p. 3).

Adler identifies a sensible and well-justified mix of topics, but decided against this 'conventional approach' to structuring the book in this component parts as he had 'originally intended' (Adler 2010, p. 2). As he puts it:

> However, the more I thought about this conventional approach, the more unhappy I felt about it. This is because insights about and proposals for each of the constituent parts of social welfare law often have more widespread application and because many, perhaps most, readers would probably decide only to read about the area(s) of social welfare law in which they were particularly interested" (Adler 2010, p. 2).

Adler's concerns mirror other critiques of the 'dustbin' approach. As Squires argued in a critical review of Alcock and Harris' book setting out the scope of welfare law, it is 'important in developing our understanding . . . so that we do not confine ourselves, as do Alcock and Harris, to a residual conception of welfare' (Squires *et al.* 1983, p. 156). To Squires, what he terms the 'welfare-law matrix' must be extended away from usual topics of poverty, housing and family and into the 'areas of production, exchange, investment and distribution' (Squires *et al.* 1983, p. 156). A narrowly drawn list of sub-topics will neglect important overlaps and areas of cumulative impact. As Mesher puts it, this 'dustbin' approach can even give the impression 'by splitting it up . . . that the problems of social security claimants are isolated, perhaps peripheral' (Mesher 1979, p. 40). It is only by cross-cutting analysis that 'the full extent of the failure can be seen' (Mesher 1979, p. 40).

The penultimate approach – closely related to the 'dustbin' – is the 'case study' approach. This is where social welfare law operates as a hook to hang other areas of law on, serving as an illustration of how principles or critiques apply to a particular context. This approach to defining social welfare law is set out by Partington (1977b, 3). He suggests that treating welfare law as a 'case study area' is a 'somewhat legally technical' approach to defining the field of study. His concern is with 'administrative law' specifically, where social welfare law has been relegated to providing ample examples of 'current problems' to which the cannons of administrative law can be applied

(Partington,1977, 3). The interest of administrative lawyers in social welfare law is unsurprising given the extent of front-line decision-making, appeal processes and range of public authorities involved (see Skoler and Weixel 1981). But the 'case study' approach is more wide-ranging than that. In organising his edited collection, Adler draws on 'public law, family law, [and] human rights law' alongside 'administrative justice' as 'branches of law' with particular application to social welfare (Adler 2010, p. 3). Mesher goes even further, arguing that private law – particularly the law of tort – should be treated as falling within the 'boundaries of welfare law' (Mesher 1979). In doing-so, he is careful to note that this 'case study' approach is not incompatible with the view that social welfare law is a field of law in its own right:

> . . . But the fact that welfare law has connections and affinities with many other areas of law does not mean it is non-existent, any more than the connections of, say, family law, with other areas means that it is non-existent (Mesher 1979, p. 39).

The final approach reflected in the literature is the 'common denominator risk' approach. Here, social welfare law is defined by reference to its role in protecting individuals from risks that are present – to varying extents – across the population as whole. From old age to income loss, Wickenden argues that socially recognised risks are the 'common denominator in all social welfare programs and protections' (Wickenden 1965, p. 520) and the forms of entitlement to shield individuals and families from these risks is the 'essence of "welfare law"' (Wickenden 1965, p. 539). She highlights a whole range of risks that fall into this category, from the risks of personal helplessness (such as children without parental support, mental incapacity, and so on), special social responsibility (such as responsibilities for children in separated families), common disaster (from customer protections through to additional support for those in the armed services), earning loss, ill health, and income deficiency (Wickenden 1965, pp. 522–539). As society has evolved, so too have these risks. Hupe and Hill point to the 'new social risks' of 'changing family structures' and increasingly 'new insecure patterns of employment' to which the welfare state has had to respond (Hupe and Hill 2022, p. 286). They argue that these require social welfare law to adopt 'more complex provisions' than those envisioned under earlier social insurance benefits, with more 'detailed attention to individual circumstances' (Hupe and Hill 2022, p. 286).

The 'common denominator risk' approach is widely adopted. The use of cash payments to protect people from social risks – including the risk of poverty – is generally how the narrower concept of 'social security law' is defined. As Simpson argues, although the term has 'different meanings in different contexts', it encompasses all forms of financial support from state 'when affected by specific social risks' – from universal payments and social insurance, through to disability support and discretionary schemes (Simpson 2022, p. 118). As Simpson puts it, "securing citizens' (economic) welfare is taken to be the purpose of social security", but 'welfare is not used as a synonym for social security or social assistance' (Simpson 2022). As Collin argues, 'every welfare state is first and foremost a provident state' (Collin 2019, p. 287). However, such a conceptualisation is – as Collin goes on to note – a 'considerable break with previous ideas about the purpose of law' (Collin 2019). Instead of seeking to balance conflicting interests, this approach establishes social welfare law as 'the law of social risk prevention and risk aftercare' (Collin 2019). This leads to questions about where the boundaries of these risks

really lie. Protection against social risks does not go as far as 'maintaining security in the face of risks' – the latter going further than the former in arguably guaranteeing minimum living standards (Deakin 2005, p. 6).

Expanding the boundaries of social welfare law scholarship

These five core approaches to defining the field of inquiry for social welfare law demonstrate the breadth in the range of approaches in the literature. From the most narrow (the 'statutes specify' approach, treating social welfare law as effectively a synonym for 'social security law') to the broadest (the 'common denominator risk' approach, where the field could stretch into areas as diverse as customer protection and health).

With the exception of the 'case study' approach – which does little to set out a definition of social welfare law scholarship, instead relegating the field to a sub-set of another, more well-established area of law – these different definitions of social welfare law scholarship are not mutually exclusive. Zacher has sought to make sense of the variety by characterising the literature as dealing with 'primary' and 'secondary' definitions (Zacher 1987, p. 375). A 'primary' approach focuses on the 'core of distinct meaning' across the literature; the ambit of 'social benefits and services' that is reflected in the 'statutes specify' literature. This is the 'narrower sense' of the term. A 'secondary' approach instead treats the subject in the 'widest sense' – looking to the motivations that drive the legal response and consequently expand its ambit into areas like labour law and fair rent legislation, and so on (Zacher 1987, p. 375). This is akin to the more expansive 'common denominator risk' approach. Zacher's argument is that the primary and secondary approaches can live in harmony with each other by simply using the 'secondary' approach to define the subject and the narrower 'primary' approach to refer in more specific sense to a body of legislation.

We agree that an expansive approach to defining social welfare law is to be preferred and that there is nothing problematic with adopting a narrower approach for specific purposes (such as setting out a textbook). However, we argue that social welfare scholarship needs to expand its boundaries further in two respects: by moving towards a more global conception of social welfare scholarship, and doing more to account for the role of non-state providers (what we have characterised as moving from the law of the welfare *state* to the law of welfare *governance*).

These arguments in sit in a much broader context. As noted above, much of the early debate about social welfare law scholarship was rooted firmly in arguments about welfare law practice. Each evolved hand-in-hand. As a result, social welfare law as a field evolves as developments in law schools and legal practice – and the relationship between the two – also shift and change. Much like in Cowan and Wheeler's description of "housing law" as "vehicular subject", social welfare law is a subject that "gets moved on" as the context in which it sits changes too (Cowan and Wheeler, 2020).

A comprehensive account of these changes would leave room for little else, but two examples illustrate the point well. First, the nature of welfare law work has changed dramatically since the "law for the poor" debates above. Some of the most rapid developments can be seen in the last few years. As Burton argues, the traditional "place based"

nature of welfare work is shifting. Heavy cuts to legal aid funding have led to "advice deserts", an increasing reliance on telephone advice, and – as a result – have begun to fragment the "longstanding connection" between local areas and social welfare advice (Burton, 2020, 354). This is a trend only exacerbated by the COVID-19 pandemic (Creutzfeldt and Sechi, 2021). Drawing on her ethnography of "progressive lawyers" across the "general spectrum of social welfare law", Kinghan argues that the "austerity agenda" – of which legal aid cuts are a component part – has gone as far as to re-shape the "cause lawyering spectrum" in social welfare law advice. She argues that the line between "grassroots practitioners" and the "elite/vanguard" being blurred as the role of strategic and proactive legal action in social welfare work becomes ever more important (Kinghan, 2021, 173-174).

Similarly seismic shifts have been seen in the University sector. Vaughen et al set out no fewer than nine changes across "government, markets and society" which have pushed and pulled at law schools in the higher education sector. From those at the macro level – such as the massification of higher education and an ongoing funding crisis – to the micro level – from the ongoing liberalisation of the regulation of legal services provision to the destruction of many career pathways in legal aid funded advice (Vaughan, Thomas and Malkani, 2018). As with Cowan and Wheeler's account of housing law, social welfare law scholarship is tied to developments in law schools – many of the arguments about its scope are tied to debates over its role in the undergraduate law curriculum (Partington, 1977b; Cowan and Wheeler, 2020). The two arguments we set out here for expanding the social welfare law scholarship's boundaries are an inevitably partial account of much broader changes in the field. We set out each in turn.

Moving towards a "global" social welfare law scholarship

Understandings of what constitutes 'social welfare law' research varies significantly across the world, but particularly – we would suggest – between the Global South and Global North. In using these terms, we acknowledge the risk which comes with conflating widely disparate approaches, and this is something we explore in more detail elsewhere (Carr et al forthcoming) but for the purposes of brevity we adopt the broad distinction between north and south in this discussion. In Western scholarship, researchers have traditionally regarded certain elements of the welfare state as 'conceptually distinct' from social welfare or social security – perhaps most obviously, health care (and primary health-care decision-making in particular), notwithstanding that in many western countries it accounts for a majority of welfare state spending and front line decision-making (Hardy 2019, p. 5). As Hardy argues, its traditional treatment as outside the canon of social security provision in the UK is particularly curious given the central role of the National Health Service in the British welfare state (Hardy 2019, p. 6).

It is perhaps trite to say that social welfare law is context dependent: 'different countries may have different understandings' of what social welfare law is based on their own social, economic, historical and political context (Hardy 2019, p. 6). But traditional approaches to defining the field of social welfare law scholarship – even when making claims that cut across the global North and South – tend to limit themselves to a distinctly western approach to defining the scope of 'social welfare law',

tethered to European welfare state structures informed particularly by Esping Anderson's well-established welfare state regime typology. As, Orloff argues, there has 'not been much intellectual traffic across the boundaries that separate "welfare states" in the global North from systems of and regulation elsewhere' (Orloff 2009, p. 317). A parochial approach is especially dominant in the 'statutes specify', 'dustbin' and 'case study' approaches outlined above.

This is important for two reasons. First, approaches to social welfare law scholarship that are a good fit for the countries that form the bulk of the literature – Europe, the US and Australasia – are not necessarily a suitable approach elsewhere. An effort to move social welfare law scholarship to a more global footing has been particularly influential in social work research. As Gray argues, the process of 'indigenisation' in social work scholarship – where 'Western knowledge is made to fit local non-Western contexts' (Gray 2016, p. 695) – has been a 'failed project' (Gray 2016, p. 8). Dominant western approaches to social work scholarship cannot simply be transplanted to every country across the world. Writing about this problem in the context of social work scholarship in Nigeria, Ugiagbe has argued that approaches need to 'move beyond indigenisation to decolonisation': avoiding an approach that focuses on 'making Western models fit African contexts' (Ugiagbe 2016, pp. 277–278). Instead scholarship and practitioners should 'grapple with the notion of authentic, domestic models of social work', which may be quite distinct to the most dominant approaches in the literature (Gray 2016, p. 2).

The same critique applies to social welfare law scholarship more broadly. These arguments are most advanced in analyses of the origins of social welfare laws across the Global South. Much has been written about the 'transplant' of the English Poor Laws into the colonies of the British Empire. The argument goes that roots of social welfare law (and the welfare state more broadly) across much of North America, Australasia and Africa is a result of the long shadow of the English Poor Laws. However, as argued by Seekings, a simplistic account of the diffusion of the English Poor Laws across the colonies of the British Empire is inaccurate. When 'examined more closely', this colonial legacy was replicated or rejected in a keenly context sensitive way (Seekings Forthcoming). The overall picture is one of 'considerable variation' based on the unique characteristics and approaches to the development of social welfare within each nation state (Seekings Forthcoming).

Second, a more global approach to social welfare law scholarship provides greater opportunities to examine 'interdependencies, mixtures and convergences' between countries (Collin 2019, p. 287). As Collin argues, what is needed by welfare law scholars is a 'pluralistic understanding' of welfare states, given that each type of welfare state across the globe 'has its own characteristic law' (Collin 2019, p. 287). For instance, the Chinese welfare state incorporates key roles for rural collectives (and other non-profit organisations) and the market (particularly in the form of unemployment insurance), in way that demonstrates how state-led approaches would fail to capture core components of welfare provision (Zuo *et al.* Forthcoming).

From law of the welfare state *to the law of welfare* governance

Second, any approach to defining social welfare law must not tether itself solely to the functions of the state. This is not just a problem associated with the 'statutes specify' approach outlined above, but characterises any approach to defining the social welfare law field of inquiry solely with reference to the provision of support to individuals '*directly* by agencies of the state' (Partington 1987, p. 422). This is a problem for two reasons. First, the use of private providers in the delivery of welfare functions is significant and longstanding across the world (Gilman 2001). As Partington has argued, any 'concept of social welfare law' must:

> . . . include a consideration of the relationship between the private and public sectors of the economy in relation to matters of social policy. Indeed, in the present political environment in Britain (and no doubt elsewhere) one much appreciate that patterns of social welfare provision are changing and becoming increasingly complex and that, as a consequence, any consideration of the legal context of social welfare provisions is also becoming increasingly complex (Partington 1987, p. 422).

This same point is echoed by Collin, who suggests that such is the role of private and 'semi-state actors' in the delivery of social welfare, it is best to conceive of the law of welfare *governance* rather than the law of the welfare *state* (Collin 2019, p. 287). This outsourcing to private actors is significant not just in its expansion of the actors involved in the delivery of welfare services, but also because it is interwoven with other key developments in social welfare provision – not least the increasing use of digital technologies (Meers *et al.* Forthcoming). Private actors are at the forefront of the use of digital and automated systems in social welfare law provision; either through the wholescale transfer of specific public functions to private parties, or (more commonly) as providers of automated systems for state actors (Ranchordás and Schuurmans 2020, p. 7).

Second, the role of the third sector is also increasingly significant in the delivery of social welfare provision. Edmiston et al's work points to the 'local eco-system' of actors increasingly involved in welfare provision, from housing associations and local authorities, through to welfare rights advisors and food banks (Edmiston *et al.* 2022). They argue that conceiving of the benefits system is as a 'unitary collection of social transfers' (as in the 'statutes specify' approach above) neglects to recognise the 'variable constellation of actors, resources and networks' central to welfare state provision (Edmiston *et al.* 2022, p. 13). These non-state actors are particularly important for the disproportionate numbers of people on the periphery or excluded from the benefits system; a group that are disproportionately BAME. Edmiston et al's contention is that a failure to acknowledge the important of this eco-system of actors means that 'such groups are empirically and analytically "out of view"' in scholarship (Edmiston *et al.* 2022, p. 13). Similar arguments have been made about the so-called 'grey sector' in social care, where the role of volunteers and family members have 'smudg[ed] the usual distinction' between public and private provision (Klein 1980, p. 34).

Conclusion

As the Journal of Social Welfare and Family Law launches a new 'Debates in Social Welfare Law' subject section, this article has revisited the longstanding debates over the

boundaries of 'social welfare law' scholarship. What emerges is fervent disagreement – especially in the formative years of the subject – over the point and scope of social welfare law as a subject. In returing to these debates, we see how social welfare law scholarship has sought to answer the question posed by Martin: given this 'failure of terminology' is 'there really is something here which deserves recognition as a distinct field of law' at all (Martin 1978)? We have set out five common approaches to answering this question and marking out the boundaries of social welfare law: 'statutes specify', 'law for the poor', the 'dustbin', the 'case study' and 'common denominator risk', each with their own uses and critiques.

Writing in the 1970s, Mesher argued that social welfare scholarship had unduly narrowed the 'boundaries of welfare law' by neglecting the relevance of private law alongside the public and administrative content of welfare state programmes (Mesher 1979). In returning to social welfare law's so-called 'problem of definition' we have sought to argue for an expansion of social welfare law scholarship in two other ways. First, we argue that scholars should move to a more towards a 'global' conception of social welfare law scholarship, incorporating the broader scope of social welfare law that often characterises scholarship in the Global South and avoiding the 'indigenisation' of western scholarship to a global context. Second, that any approach to social welfare scholarship should acknowledge the increasing importance of private and charitable providers in the delivery of social welfare provision, instead of adopting a 'state only' conception of the scope of social welfare law.

As King has argued in the context of social rights scholarship, the 'theoretical suppositions' that shape the field of inquiry matter (King 2019, p. 292). We hope that expanding the boundaries of social welfare law scholarship in these two respects will help to foster a greater collaboration between scholarship across the Global North and South – a trend already very well established in comparative social policy research, but yet to be reflected to the same extent in legal scholarship. And – in recognising the increasing role of non-state actors – for social welfare law scholarship to provide a more nuanced and inclusive understanding of the eco-systems of organisations involved in the front-line of welfare state provision.

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